

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

ALLSTATE INSURANCE COMPANY,  
ALLSTATE PROPERTY & CASUALTY INSURANCE  
COMPANY,  
ALLSTATE FIRE & CASUALTY INSURANCE COMPANY,  
AND ALLSTATE INDEMNITY COMPANY,

C.A. No.7:20-cv-01959

Plaintiffs,

v.

JAMES A. SPINA II, D.C.,  
ANDREA GROSSMAN,  
KIMBERLY A. SPINA,  
MAELIEN SPINA,  
CATSKILL MEDICAL CARE, P.C. (d/b/a MIDDLETOWN  
PHYSICAL THERAPY AND PAIN MANAGEMENT),  
TAMMY GARCIA-KLIPFEL, ESQ., as personal representative of  
the Estate of HERBERT M. GARCIA, M.D., deceased,  
PHYSICAL MEDICINE & DIAGNOSTIC TESTING, P.C.,  
CLIFTON D. BURT, M.D.,  
CHARLES H. BAGLEY, M.D.,  
MIDDLETOWN PHYSICAL THERAPY, P.C. (d/b/a PHYSICAL  
THERAPY OF ORANGE COUNTY),  
ELEANORE B. ROBLES, PT (a/k/a ELEANORE B. ROBLES-  
PARAS, PT),  
MID HUDSON ACUPUNCTURE, P.C.,  
RALPH J. STORM, L.AC.,  
OPEN MRI OF MIDDLETOWN, L.L.C.,  
UPSTATE RADIOLOGY, P.C.,  
ACCREDITED MEDICAL SUPPLY INC.,  
EFFECTIVE MARKETING & COMMUNICATIONS, LLC,  
JJMJ REALTY COMPANY, AND  
ROSWELL REALTY LLC,

Defendants.

**JUDGMENT**

On September 14, 2021, the Court considered the application of the Plaintiffs, Allstate Insurance Company, Allstate Property & Casualty Insurance Company, Allstate Fire & Casualty Insurance Company, and Allstate Indemnity Company (collectively, “Allstate”) for entry of a

Default Judgment against Defendants, Catskill Medical Care, P.C. (d/b/a Middletown Physical Therapy and Pain Management)(“Catskill”), Effective Marketing & Communications, LLC (“Effective Marketing”) and Roswell Realty, LLC (“Roswell Realty”) (collectively, “Defendants”) under Rule 55(b)(2) of the Federal Rules of Civil Procedure. After the issuance of an Order to Show Cause, consideration of the Plaintiff’s moving papers, the authorities cited therein, and the pleadings on file in this action, the Court finds as follows:

A Clerk’s Certificate of Default was entered against Catskill on November 10, 2020. *See* ECF No. 211. A Clerk’s Certificate of Default was entered against Roswell Realty on November 12, 2020. *See* ECF No. 216. A Clerk’s Certificate of Default was entered against Effective Marketing on November 12, 2020. *See* ECF No. 217. None of the subject Defendants are minors, incompetent persons, or current members of the military service. As such, Allstate has established that Catskill, Effective Marketing and Roswell Realty have failed to serve and/or file an answer, or otherwise respond to any counts in Allstate’s Amended Complaint.

**I. DEFAULT JUDGMENT AS TO DEFENDANT, CATSKILL MEDICAL CARE, P.C. (D/B/A MIDDLETOWN PHYSICAL THERAPY AND PAIN MANAGEMENT)**

Allstate has established that: (1) Catskill is liable on civil RICO, common law fraud, and unjust enrichment claims asserted against Catskill; (2) Catskill is jointly and severally liable for the damages inflicted by the unlawful operation of Middletown Physical Therapy, P.C. (d/b/a Physical Therapy of Orange County) Physical Medicine & Diagnostic Testing, P.C., Mid Hudson Acupuncture, P.C., JJMJ Realty Company, Effective Marketing & Communications, LLC, and Roswell Realty, LLC; (3) that Catskill, at all relevant times, was (a) fraudulently incorporated, (b) unlawfully owned, operated, managed, and/or controlled by one or more non-physician, (c) engaged in the unlawful sharing of fees derived from the provision of professional physician services, (d) billing for healthcare services that were not actually rendered, (e) billing for services

rendered pursuant to an unlawful referral, and (f) engaged in the billing for medically unnecessary treatments and tests, and thus has no standing to submit or receive assigned No-Fault benefits.

WHEREFORE it is hereby ORDERED, ADJUDGED, and DECREED that a Default Judgment should be entered against Catskill Medical Care, P.C. (d/b/a Middletown Physical Therapy and Pain Management) as to Counts XV-XX (RICO), Count XXI (fraud), Count XXVII (Unjust Enrichment), and Count XXXIII (Declaratory Judgment) and in favor of Allstate for a total award of \$3,037,268.53 as follows:

<u>Source of Damages/ Cause of Action</u>	<u>Count(s)</u>	<u>Actual Damages</u>	<u>Damages Including Trebling Pursuant to 18 U.S.C. § 1964(c)</u>	<u>TOTALS</u>
Physical Medicine & Diagnostic Testing, P.C.	XV-XX	\$146,046.04	\$438,138.12	\$438,138.12
Middletown Physical Therapy, P.C. (d/b/a Physical Therapy of Orange County)	XV-XX	\$736,988.41	\$2,210,965.23	\$2,210,965.23
Mid Hudson Acupuncture, P.C.	XV-XX	\$85,744.27	\$257,232.81	\$257,232.81
Common Law Fraud	XXI	\$130,932.37	-	\$130,932.37
Unjust Enrichment	XXVII	\$130,932.37	-	\$130,932.37
<b><u>RICO DAMAGES</u></b>		\$968,778.72	\$2,906,336.16	\$2,906,336.16
<b><u>STATE LAW DAMAGES</u></b>		\$130,932.37 <sup>A</sup>	-	\$130,932.37
<b><u>TOTAL DAMAGES</u></b>		\$1,099,711.09	\$2,906,336.16	<b>\$3,037,268.53</b>

<sup>A</sup> The Court notes that the Plaintiffs are not entitled to double recovery. As such, the single damages awarded relative to the Plaintiffs' state law causes of action for Common Law Fraud and Unjust Enrichment are only incorporated to the Court's final damages calculation once, and added to the trebled RICO damages for a total award of \$3,037,268.53.

WHEREFORE it is hereby further ORDERED, ADJUDGED, and DECREED that this judgment shall bear interest at the judgment rate from the date of entry until paid.

WHEREFORE it is hereby further ORDERED, ADJUDGED, and DECREED that Catskill Medical Care, P.C. (d/b/a Middletown Physical Therapy and Pain Management), at all relevant times, was (a) fraudulently incorporated, (b) unlawfully owned, operated, managed, and/or controlled by one or more non-physician, (c) engaged in the unlawful sharing of fees derived from the provision of professional physician services, (d) billing for healthcare services that were not actually rendered, (e) billing for services rendered pursuant to an unlawful referral, and (f) engaged in the billing for medically unnecessary treatments and tests, and thus has no standing to submit or receive assigned No-Fault benefits. Accordingly, Catskill Medical Care, P.C. (d/b/a Middletown Physical Therapy and Pain Management), has no standing to pursue recovery from Allstate relative to any and all No-Fault insurance benefit payments under the provision of New York Insurance Law § 5102, and Allstate shall have no legal obligation to make any further payment(s) on any claim submitted to Allstate by Catskill Medical Care, P.C. (d/b/a Middletown Physical Therapy and Pain Management) pursuant to New York Insurance Law § 5102.

## **II. DEFAULT JUDGMENT AS TO DEFENDANTS, EFFECTIVE MARKETING & COMMUNICATIONS, LLC AND ROSWELL REALTY, LLC**

Allstate has also established that: (1) Effective Marketing and Roswell Realty are liable on civil RICO, common law fraud, and unjust enrichment claims asserted against Effective Marketing and Roswell Realty; and, (2) Effective Marketing and Roswell Realty are jointly and severally liable for the damages inflicted by the unlawful operation of Catskill Medical Care, P.C. (d/b/a Middletown Physical Therapy and Pain Management), Middletown Physical Therapy, P.C. (d/b/a

Physical Therapy of Orange County) Physical Medicine & Diagnostic Testing, P.C., and Mid Hudson Acupuncture, P.C.

WHEREFORE it is hereby ORDERED, ADJUDGED, and DECREED that a Default Judgment should be entered against Effective Marketing & Communications, LLC and Roswell Realty LLC as to Counts I-VIII (RICO), Counts XXI-XXIV (Common Law Fraud), and Counts XXVII-XXX (Unjust Enrichment) as follows:

<u>Source of Damages/ Cause of Action</u>	<u>Count(s)</u>	<u>Actual Damages</u>	<u>Damages Including Trebling Pursuant to 18 U.S.C. § 1964(c)</u>	<u>TOTALS</u>
Catskill Medical Care, P.C. (d/b/a Middletown Physical Therapy and Pain Management)	I, II	\$130,932.37	\$392,797.11	\$392,797.11
Physical Medicine & Diagnostic Testing, P.C.	III, IV	\$146,046.04	\$438,138.12	\$438,138.12
Middletown Physical Therapy, P.C. (d/b/a Physical Therapy of Orange County)	V, VI	\$736,988.41	\$2,210,965.23	\$2,210,965.23
Mid Hudson Acupuncture, P.C.	VII, VIII	\$85,744.27	\$257,232.81	\$257,232.81
Common Law Fraud	XXI-XXIV	\$1,099,711.09	-	\$1,099,711.09
Unjust Enrichment	XXVII-XXX	\$1,099,711.09	-	\$1,099,711.09
<b><u>TOTAL DAMAGES</u></b>		\$1,099,711.09 <sup>B</sup>	\$3,299,133.27	<b>\$3,299,133.27</b>

<sup>B</sup> The Court notes that the Plaintiffs are not entitled to double recovery. Given that the damages for the Plaintiffs' state law causes of action are encompassed by the RICO award, the single damages relative to the Plaintiffs' state law causes of action for Common Law Fraud and Unjust Enrichment are not incorporated into the Court's final calculation for a total award of \$3,299,133.27.

It is further ORDERED, ADJUDGED, and DECREED that this judgment shall bear interest at the judgment rate from the date of entry until paid.

White Plains, NY

Dated: September 23, 2021

SO ORDERED.

A handwritten signature in black ink, appearing to read 'KMK', is written over a horizontal line.

Hon. Kenneth M. Karas (U.S.D.J.)